(3) (2)

Nos. 93-1833 and 93-1955

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

CITIZENS FOR TERM LIMITS,
Petitioner,

v.

THOMAS FOLEY, *et al.*,
Respondents.

CHRISTINE O. GREGOIRE, *et al.*,
Petitioners,

v.

SUSAN THORSTED, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MEMORANDUM IN RESPONSE TO PETITIONS FOR CERTIORARI

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1. These petitions seek review by this Court of an order of a district court before judgment in the court of appeals. Under this Court's Rule 11, that is a procedure appropriate only in a situation of "imperative public importance."

2. There is no question that the issue of the constitutionality of state laws that restrict long-time congressional

incumbents from having their names printed on the ballot is important. It affects the process of elections to Congress. It has created deep conflict among federal circuits and state supreme courts as to whether ballot restrictions amount to qualifications for congressional office. It merits review by this Court.

However, it is already before this Court through normal procedure in Nos. 93-1456 and 93-1828, which seek review of the Supreme Court of Arkansas' resolution of this very issue. In fact, petitioner in No. 93-1833 has filed a brief in No. 93-1828 as *amicus curiae*.

3. The District Court's ruling here essentially duplicates the holding of the Supreme Court of Arkansas already presented in Nos. 93-1456 and No. 93-1828.[1] It therefore does not appear to present a compelling occasion for the extraordinary procedure of certiorari before judgment in the court of appeals. However, the ruling in the state of Washington certainly underscores the widespread and burgeoning national impact of the issue, and the necessity for a resolution by this Court. See, *e.g.*, *Opinion of the Justices*, 413 Mass. 1201, 1217, 595 N.E.2d 292, 302 (1992) (declining to "predict the view the Supreme Court ultimately would take"). If this Court wishes to consider two very similar state laws[2] instead of one, the present petitions present an appropriate vehicle.

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[1] The District Court relied alternatively on the Fourteenth Amendment as well as Article I; the Arkansas Supreme Court relied simply on Article I, while rejecting the Arkansas respondents' Fourteenth Amendment challenge to actual term limits on state officials. The Arkansas respondents of course can raise their Fourteenth Amendment argument in this Court as an alternative basis for affirmance.

[2] The Washington ballot regulation after the stated period of incumbency applies for six years; the Arkansas provision applies permanently for a particular office.

CONCLUSION

For the reasons stated, the petitions should be denied or held for disposition in light of Nos. 93-1456 and 93-1828.

Respectfully submitted,

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June 13, 1994